



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/866,831	05/29/2001	Raymond Joseph Reisdorf	TP2630	7236

23906 7590 01/28/2003

E I DU PONT DE NEMOURS AND COMPANY
LEGAL PATENT RECORDS CENTER
BARLEY MILL PLAZA 25/1128
4417 LANCASTER PIKE
WILMINGTON, DE 19805

EXAMINER

SALVATORE, LYNDIA

ART UNIT	PAPER NUMBER
----------	--------------

1771

7

DATE MAILED: 01/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/866,831

Applicant(s)

REISDORF ET AL.

Examiner

Lynda M Salvatore

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 January 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) 18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3 and 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-17, drawn to a laminate structure classified in class 442, subclass 59+.

II. Claim 18, drawn to a method for making a laminate structure, classified in class, 427 subclasses 389.9 and 412.

2. The inventions are distinct, each from the other because:

Inventions of Group II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the method of applying a polymer coating and using heat and pressure to form a laminate may be used to make other and materially different non-water resistance fabric laminates such as those used in building materials, floor and wall coverings.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with Fredrick D. Strickland a provisional election was made without traverse to prosecute the invention of a laminate structure, Group I, claims 1-17. Affirmation of this election must be made by applicant in replying to this Office action. Claim is 18 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Art Unit: 1771

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

6. Applicant is advised that the reply to this requirement to complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Priority

7. This application filed under former 37 CFR 1.60 lacks the necessary reference to the prior application. A statement reading "This is a non-provisional of provisional Application No.60/207733, filed May 26th, 2000 should be entered following the title of the invention or as the first sentence of the specification. Also, the current status of all non-provisional parent applications referenced should be included.

Claim Rejections - 35 USC § 102/103

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 1771

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-8, 10-13 and 15-17 are rejected under 35 U.S.C. 102 (b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Pithouse et al., US 4,631,098.

The patent issued to Pithouse et al., teaches a heat recoverable article comprising a fabric layer and at least one polymeric layer (Abstract). The polymer layer may comprise various thermoplastic materials such as ethylene vinyl acetate, polypropylene and methacrylates and their copolymers (Column 3, 45-60). The heat recoverable fibers may comprise polyolefin polymers such as polyethylene, polyester and acrylic (Column 5, 42-45). The structure of the fabric may be a knit, woven, or non-woven (Column 6, 11-15). Pithouse et al., discloses various ways apply the polymer layer to form the fabric composite, such as embedding the fabric in the polymer. Pithouse et al., also teaches that the polymeric materials forming the layers on opposite sides of the fabric may be the same or may differ from one another, and laminates of different polymeric layers may used on one or both sides of the fabric (Column 6, 36-69).

Although, Pithouse et al., does not explicitly teach the stress index of the polymers and the trapezoidal tear strength of the laminate, it is reasonable to presume that said properties are inherent to the laminate of Pithouse et al. Support for said presumption is found in the use of like materials (i.e., ethylene vinyl acetate, polypropylene and methacrylates and their copolymers and fibers of polyethylene, polyester and acrylic), which would result in the claimed properties. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald* 205 USPQ 594

In addition, the presently claimed said properties would obviously have been present once the Pithouse et al., product is provided. *In re Best*, 195 USPQ 433

Claim Rejections - 35 USC § 103

10. Claims 9 and 14 are rejected under 35 U.S.C. 103(a) as obvious over Pithouse et al., US 4,631,098 as applied to claims 7 and 13 above.

With regard to claim 9, Pithouse et al., does not teach the claimed thermoplastic elastomer, however, it would have been obvious to one having ordinary skill in the art at the time the invention was made to choose an appropriate thermoplastic elastomer since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416

With regard to claim 14, Pithouse et al., does not teach a spun-bonded polypropylene fabric, but does teach polypropylene fibers. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a spun-bonded polypropylene fabric since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416

Conclusion


11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynda M Salvatore whose telephone number is 703-305-4070. The examiner can normally be reached on M-F.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 703-308-2414. The fax phone numbers for the

Art Unit: 1771

organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.


January 24, 2003


CHERYL A. JUSKA
PRIMARY EXAMINER